

RECORD OF PROCEEDINGS
Etna Township Zoning Commission

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Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

June 29,

2005

Held _____,

(YEAR)

PUD's/SB18/Land Use

The Etna Township Zoning Commission met in the Etna Township Hall on June 29, 2005 for the purpose of conducting a special meeting. The meeting was audio taped for the township records.

The meeting was called to order at 7:00 p.m. by Chairman Bravard with the following members present: Mr. Kerner, Mrs. Taylor, Mr. Colburn, Mr. Van Dyne, Chairman Bravard, and Clerk Laura Brown.

Announcement

Chairman Bravard stated that at the next meeting we will probable have a packed house. Chairman Bravard asked Mr. Kerner to count chairs and announce when we are at the 40 people maximum. Mr. VanDyne can bring a stopwatch to be timekeeper for the public hearing on July 6, 2005. The Zoning Commission will decide how long the public can speak.

Mr. VanDyne moved that we adopt the agenda. Kerner seconded. Roll call: Motion passed 5-0.

Mr. Donald Brosius with Loveland and Brosius attorney's at law out of Columbus, represents governmental bodies, primarily townships all over the state. He represents townships in Franklin County, Violet Township in Fairfield County, Delaware County Townships, Delaware County Regional Planning Commission and some work with counties. He speaks on land use items and regularly speaks at the Ohio Township Association Conventions.

Mr. Brosius presented a handout on Senate Bill 18, Section 519-02 as it was established May 27, 2005. Mr. Brosius gave a brief overview of Senate Bill 18. In November of 2004 HB148 was adopted. On December 8, 2004 an amendment was made that changed the general welfare clause. It became law without the governor's signature. On May 26, 2005 a lawsuit was filed in Franklin County common please court alleging that senate bill 18 was unconstitutional. He represents the County Commissioner's Association and the Ohio Township Association and they are going to file a brief in that lawsuit. It was filed by Summit County. The lawsuit is pending. The law today is 519.02. When the township's first got general welfare legislation it was the same legislation as municipalities had with the same power. Senate Bill 18 changed the health, safety and general welfare requirements. Townships now have the authority to have reasonable residential architectural and landscaping standards excluding exterior building materials. Trustees have the ability to create this board and delegate it to the zoning inspector to enforce it or to delegate it to the Zoning Commission. They can make the Zoning Commission the architectural review board. House Bill 148 had a provision in it; it basically gave townships the authority to settle zoning litigation. If the Zoning Commission and the Trustees approve a rezoning and the citizens put it on referendum. House Bill 148 stated if that goes on referendum and the developer later sues, the township Trustees have the authority to settled those lawsuits and give him a rezoning by court decree. Before this is done the developer has to put on evidence of lose of value. If there was a referendum petition circulated then the circulator of that petition had a right to intervene in the litigation. House Bill 411 changed that statue. It gave counties have the same authority. It does not require the developer to prove lose of value and it took away the right of a referendum petition circulator to intervene in the litigation. This makes it easier for townships to resolve it because there is not right to intervene on the part of the referendum petitioner. Mr. Brosius stated that at some point there will be a constitutional issue. The Zoning Commission and the Trustees approve a rezoning. The statue is very clear that with a rezoning you have a right of referendum. Referendum after referendum at some point someone will file a lawsuit and says you have effectuated a taking of my property, the township voted for the rezoning. A resent Supreme Court case that basically indicated if that happen you have every right to sue the governmental body for the actions of its residents. The township would be subject to the damage, it is a taking of the property. Mr. Brosius will fax the case over tomorrow. There was no viable economic use and the courts said there is no substantial viable economical use and constitutes a taking. The township had to prove that the developer had substantial viable economic use and the township did not show that and let the developer with nothing you bought it. This is in the common pleas court in Hamilton County.

Mr. VanDyne inquired about infrastructure fees. Don Brosius stated that last week a bill was introduced to provide the authority for impact fees, House Bill 299. Allowing for Townships, Counties, and School districts to levy impact fees on new development to finance capital improvements necessitated by that development. Once you introduce water and sewer into an area your justifications for differing lots and things change. You are not going to stop development but you can plan for development. You need a plan and a zoning code to implement the plan.

Jerry Brems with Licking County Planning Commission stated that prior to proposing any type of growth management fee they have to develop a capital improvement plan or a designated district for a specific area. Essentially it becomes a new tax as opposed to a fee. A new residence will pay an additional tax for a period of years, it is not a developer who has to come up with the cash up front. The new program is designed to spread the cost over a longer period of time instead of having the builder or home owner come up with the fees upfront, this program has a much lower initial impact. We have to be careful when using the term impact fee when discussing the new legislation so that it does not get confused with what is traditionally called an impact fee where the developer has to pay up front. The money that is collected from these fees can only be used for those items identified in the capital improvement program.

First you have to establish the architectural standards. The township will need professional help coming up with the standards. You can charge a fee if you require architectural review because the township has the power to require a review but it can only cover the costs. The statue contemplates that the authority be the zoning inspector if the Trustees want for the code setter, or the Zoning Commission or a separate architectural review board. With the separate architectural review board at least one member has to be a licensed architect or engineer and no more than

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Held ~~five residents. What if we had a code that provided for that in the event that professional reviews are needed that the applicant will pay the cost?~~ Jerry Brems said a problem ~~the township could have is deciding when it would be~~ required to have the outside review. The township would have to implement a procedure for fair treatment. Jim VanDyne discussed the code for Stucco or Drivet Board on houses and pending lawsuits. It is a mold problem. Mr. Brosius does not know of any township that has come up with architectural standards. The statute forbids the township to regulate exterior building materials. Jerry Brems stated that the building code determines what materials can be utilized in construction and how the construction is concurred versus with the zoning allows you to do dealing primarily with esthetics and what the outside can look like regardless of the building materials.

The township will take the lowest possible zoning category, some developer is going to come in and want to rezone it to a higher density. Under Senate Bill 18 it is a density argument. The township has the authority now to justify density, lot sizes, all sorts of things under public health and safety. When they changed Senate Bill 18 they wanted an argument on density and lot sizes on residential. Mr. Brosius is not saying they will win; they were able to get the legislature to take away general welfare authority from Township's and County's on lot size and density. There are cases out there under the old rule that justify larger lots. Jim VanDyne stated that a third of an acre. Are they aloud to come in and do what ever they want to? Mr. Brosius stated the legislature gave builders an argument, they may not win it. It is still a tough argument. If you are looking at the township's lot sizes, if we have a plan, what is the basis? Is it preservation of ground water, rural character, what is the reason? Jim VanDyne is concerned with fire. If your house is five feet from mine or ten feet from mine and that house catches on fire, has there been a study made on the flame spread between houses, in the building code can it be made mandatory that the walls be two hour fire walls on the end of the houses? Don Brosius stated that the building codes have changed the law and created the State, which is something that is outside our code. That would go through State regulation. The township has no authority to get into the residential building code business. This law just passed within the past six months.

Don Brosius stated that House Bill 148 gave you full general welfare zoning for everyone. The builders were able to get in there and change it. They took away general welfare authority for essentially density and lot size. The builders want an argument, they may not win. This classification is not based on health or safety and no justification for that sort of lot size. The key is to have a really good comprehensive plan and a good zoning plan. The current zoning code is based on the old state law that came out in the seventy's. For the Planned Unit Development plan he feels you should have a stand alone planned residential district or stand alone planned industrial district or commercial with its own standards. Mr. Brosius discussed the conservation district. With Etna Township's Planned Unit Development if the property is zoned R-1 I would essentially have to get two zonings; it is cumbersome, strange and limited. The procedure does not match the statute, it is not lawful. The current code (the one that was removed) and the one the Zoning Commission has worked on is not lawful. What does the township want to accomplish? There was an issue at one time on whether you could have a single use PUD. That issue went to the Supreme Court of Ohio, it was Genoa Township, the Zonder's case. The Supreme Court said that a PUD contemplates a mixed use. The neighbors argued that it was not a lawful PUD because it is Planned Residential and it is all houses. The Court said no, open space is a use. So there is a mix of uses. You can have a Planned Residential District with open space. Jersey Township has different Planned Residential Districts with different open space requirements. What type of Planned Unit Development do you want? In terms of procedure one of the things you have to decide is what is going to be the act that is subject to referendum and what is going to be the administrative action. One of them is subject to referendum, it is the rezoning. At what point is the property going to be rezoned. Once it is rezoned, everything else that is done is administrative which is subject to appeal to court. Rezoning is not but administrative is. When you look at the proposed Planned Unit Development text, Mr. Brosius does not know what act is subject to referendum and the time frames do not meet the statute. There is no separate procedural statute for a PUD it is still the rezoning statute. Mr. Bravard asked if the old procedures were illegal. Mr. Brosius replied yes. Jerry Brems stated that the old PUD under the old law was not necessarily unlawful but what is being proposed does not meet the new state standards. Don Brosius asked, what is it that the township wants? Do you want a single district PUD, do you want a planned residential PUD, do you want a conservation development PUD, maybe you want a mixed use PUD, or planned industrial. You may end up with six different PUD's.

Philip Laurien with Delaware County Regional Planning Commission, zoning is an evolutionary process. There are certain bench marks and the township needs to have an attorney or county prosecutor advise when you develop any new code to see the legal aspects. Then you need to have a planner who can tell you whether it practically does what you intend for it to do. The comprehensive plan answers the question what do you want your community to look like when it is all build out and the vision is all done. The draft planned unit development section functionally does not work for Mr. Laurien. He feels there are a lot of arbitrary things and many of them were pointed out in the letter from Licking County. He agrees with most of Licking County's comments.

Phil Laurien stated that all of the comprehensive plans are on the Delaware County website. The township can pilot them at no charge but to do so at our own risk. Unless you have some legal assistance and some planning assistance to help you tailor the plan to get the vision that Etna Township wants to look like when we are all built out it may not work for the township. Each community is different. As they have re-written some of the resolutions they have had committees that have included builders, surveyors, engineers, some who could critic all the various aspects of it. First of all he thinks the acreage requirements are arbitrary, if you say you have to have a minimum of 40 acres to do it he does not agree with that. Delaware County has some very nice planned residential developments that are smaller than 40 acres in size and they link together with other developments. He suggested a two step process that establishes the first step; the preliminary development plan is the legislative act. It saves cash for the builder results in less clash with the Township. Right now our process says you have to do a preliminary development plan then a final development plan and then thirty days after that is when the permits can be issued. The final development plan is the process that is subject to referendum. This is a very expensive process to go through and it is very risky.

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~~In Delaware County they identify what the township wants in the preliminary plan and then after that vote on that preliminary development plan and the zoning at that time. The vote is at the preliminary plan stage and then they have thirty days referendum period after which now you want all the information on what it will look like and who the users are going to be. The developer is less likely to complain because he will not be subject to referendum, it is administrative review. Mr. Laurien prefers the two step process, less cash for the developer and less clash with the township. Most of the plans Delaware County have written with Don Brosius because he is their attorney. Mr. Kerner asked why the township should care if it costs the developer a lot of money. Mr. Laurien said if the Developer is trying to build a relationship of trust with the township. I would like you to let me do a certain type of development with flexible standards, a planned unit development. I need to see if you like my concept. If what you are really saying to him is we won't make up our mind until you not only chose a preliminary plan but also a final development plan you set the bar very high in terms of all the engineering, all the design, all the architecture and landscape and do it all for you to decide you do not like it. The developer may have spent one hundred thousand or two hundred thousand in up front cost to be told no by the township or no by the voters that referendum it. If he has the ability to spend half of that and do the preliminary plan the township gets enough of the look to say we like the general look, general layout, and the density. The township will rezone it and the developer will come back with a plan that will be highly detailed and more fully developed. It will separate the process out. Mr. Kerner does not care if it cost a million dollars because the developer is out to make money off of the township. Why should we try to save the developer money? Phil Laurien stated the township should be able to get enough of that look from the preliminary plan process to satisfy the commission. Don Brosius works with people that also want the same one step process. He is not sure they get as much activity. It is easier to go to a standard district and you do not get the same things.~~

Jerry Brems stated that you are getting some residential and the community gets something back when they have a planned unit development zoning that you can work with the developer with that flexibility. It is not just what the developer is getting he gets maybe more money with higher net density and lower gross density and cost are overall lower therefore the community gets something back in a well designed planned unit development. Jerry Brems knows that the township and the county have had difficulty in the past couple years sometimes in coordinating or making sure the review between the county subdivision regulations are matching up with the PUD and the PUD complete process and the fire plan versus the preliminary plan. I am not sure there is a perfect answer to that anywhere. We have the same problem with the County when it comes to subdivision whether it is a PUD or standard subdivision there is not really a whole lot of difference in the review. We have the same problem with developers in determining what is required at the preliminary stage versus the final stage. We have a sketch plan, pre-engineering, then the preliminary and then the final always tried to differentiate, keep the cost down to the developer until he comfortable feeling and the county is comfortable with the over all design. Once you are happy with the overall design then go spend the money on your detailed engineering, your water and sewer and streets and slopes. Mike Kerner stated that the township is paying the price now for a one step process in the past where preliminary plans became the final plans and things were not quite the way they were proposed be. Jerry Brems felt that part of that wasn't the plans it was the procedure even at that point in time. It was not necessarily the steps that we used it was a lot of the reviews did not occur. Some of those issues at that point in time were not deemed to be important. Now you have different characters and different people looking at things. A greater history, and you say we all (and when he says you he is talking about the county to) looking at these things and say we should have paid more attention to it. A lot of the concerns of what the township has had over the last several years with PUD's could very easily have been resolved during the review process had they been deemed to have been important at the time they were being reviewed. Mr. Brems feels the township has learned a lot and the county has learned a lot and some of it can be addressed during the re-writing of the PUD. They are being addressed during the re-writing of the subdivision regulations. Don Brosius has seen the same problems in other places and a lot of it is education and communication. The way the process should work they get there zoning, they get their final development plan approved. They do the first step and get it rezoned and then do the final development. The developer then takes what the township has given them down to the County. If the platting wants something else then that developer needs to come back to the township and get a plan modification from a zoning stand point. Once a developer platting process gets preliminary approval then the developer is spending real dollars. After that preliminary approval is given and he is now ready for final approval and the plat comes to the zoning department and they need to sign off on this. Then the zoning department says no that looks different. That is a problem. It is a matter of learning and communicating. You have to know exactly the final product that you have ultimately approved and communicate that with the planning commission and it is at the technical review process or preliminary plan process. The township is invited. Jerry Brems stated for the last two years they have been regular attendees. Jim VanDyne feels that even though the communication is there they do not necessarily listen to what the township is wanting. When you have the meeting on the preliminary and the township has input. Don Brosius stated that the township approves the development plan from the zoning standpoint. If the county wants something different from a platting standpoint somebody has a problem. That developer has to come back to the township for a plan modification or he needs to get a variance from the county subdivision regulations. It is not a matter that the county does not listen; legally the developer needs a plan modification from the township or a variance from the county. Jim VanDyne does not feel that it is working. The developer does not come back to the township they listen to what the county says and that is the end of it. If the township questions the developer they say the county gave it to them and they do not have to listen to the township. Mr. Brosius feels it is still a learning process, an educational process and communication process.

Mr. Burkholder feels that the developer has put the county and the township against each other. How does the enforcement part on the planned unit development when you have specific plans work? For example, the detail of the planned unit development and the developer does not adhere to the plan where do you go and what power do you have as a township to enforce that zoning. Mr. Brosius stated that ultimately you go to court. It is a zoning violation. Mr. Burkholder asked if you could withhold permits. Don Brosius said no you have to sue. Pointing fingers is not solving anything. The township is going to have to get smart. When you do the Planned Unit

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Held Development it is communicating with the planning commission and the developer. When the planning commission is going through the preliminary plan approval and something changes or they propose a change that developer has to let the planning commission know. Jerry Brems explained that in the past, he wants to differentiate between the past issues and where we are at now. A lot of it has occurred and we are still dealing with because of the approvals that have initially occurred. They received preliminary plan approval at the township maybe even final from the township for a PUD, planning received preliminary plan which may have in fact involved changes from the township approved plan PUD, the township at the time did not get to those changes, did not require the developers to go back for a change, the county moved forward with the process. Now while they are under construction and different phases are under construction the township is saying now wait a minute what the county approved, which they did, is not what we the township approved, which is correct. This is a lot of what we are dealing with are those types of situations. And that is not to say that we do not have potential differences. But he feels that they are pretty much resolved during the process now. If the township tells the county it does not meet the township zoning it does not move forward. The county can not approve something that does not meet the township zoning. In the past, when at the time the township did not deem some of the changes to be important or did not care. No formal activity was taken in the part of the township. A year or two later things have changed and now the township says that is not what we agreed to and the county responds it is too late and it is not that they disagree necessarily but at the time if the township did not raise an objection the county's attitude was that the process was fine. Jerry Brems hopes that we have over come those types of issues. We have not had a new planned unit development started. Don Brosius asked Jerry if this is the process in every township in Licking County. Mr. Brems explained that in the other townships with PUD's there has generally been more involvement throughout the entire process. The county has had involvement now with the township but in the past that was not necessarily the case. The township would do their work and send it off to the county. Now the township has maintained its involvement through the county process. They have been involved in the TRC's and items the township is unhappy with we have resolved. If the staff disagrees with the township on a preliminary plan change then the planning commission will make that decision with the township making their voices heard.

Phil Laurien referred to the proposed planned unit development Section 1332 the township has only one sentences regarding modification to a development plan. The model code that they worked on has four or five pages dealing with modification. Differentiate between minor modification and major modification. The zoning officer's signature, that signifies that all of the conditions have been met or have been modified to our satisfaction. Jerry Brems feels that we are missing the part between major and minor modification.

Mike Kerner asked Don Brosius to clarify a statement he made early in the case of the planned unit development if they are doing something that is not in accordance with the final development plan that you cannot fail to issue them a permit to do it. Don Brosius said it was a zoning violation. It is a violation of the zoning because when you approve a PUD you essentially adopted zoning regulations. If they are doing something in violation of that PUD it is a zoning violation. You issue a violation, and then you would end up going to common please court, suing. You can pursue a zoning violation one of two ways. You can pursue it civilly or criminally. You can pursue it as a minor misdemeanor. Steve Ferris asked if he was referring to going through the County Prosecutor. Don Brosius stated the prosecutor can handle both civil and criminal. Steve Ferris stated the resolution does not address the situation, issuing a zoning violation which Don Brosius was talking about he does not feel the zoning inspectors can issue the zoning violation but they do have relief with the prosecutor's office. A zoning inspector can not write a zoning violation and send it off. Don Brosius stated there has to be a violation of the code. Mike Kerner stated if they put four houses on an acre and the agreement was three houses on an acre, they do not have to issue a permit for the forth house because it is not in accordance with the final development plan. Phil Laurien agreed with Mr. Kerner, you should not issue the fourth permit. The township can certainly site someone for a zoning violation but only the court can determine whether it is a violation. The township can site them for having ten junk cars in the front yard or you built a house ten feet to close to the street. That is the zoning officer's job is to site the zoning violation. His opinion has made an administrative decision. Mike Kerner said if the developer is going to build 200 hundred houses and then they start building 201, 202, 203 the township does not have to issue permits for those. Phil Laurien said he believes that is correct, the township does not have to issue permits for those. Mike Kerner said that when they asked if you could withhold permits you answered no. Jerry Brems stated that if it is a platted subdivision then those lots are in fact created and legal lots, platted lots, that developer comes in and proposes to build a home that meets the setbacks on that lot and meets all the other zoning requirements that pertains to that lot then he must get a permit. If the township is in disagreement whether that subdivision met that planned unit development plan and the county has in fact allowed it to be platted I do not believe you can withhold an individual building permit for a lot in that subdivision. Don Brosius stated that you are adding more facts, the more facts you add can change the answer. Jerry Brems stated a subdivision is platted that does not meet the township planned unit development plan then that is a whole different issue but in terms of once a subdivision has been platted and approved or been platted and a bond placed so it is recorded once that legally exist I do not believe you can without a zoning permit for that lot because you believe the subdivision itself does not meet the planned unit development regulations. Don Brosius said that what should happen in theory is a plat should never be approved until there is a certification and that is one of the requirements of plat approval that it complies with zoning. The theory is once it is approved then it complies. Jerry Brems was asked if the township signs plats. As a generalization and as part of Licking County's requirements the township is supposed to sign off on the final plats. There have been exception to that, the township has been offered to sign off on the plat, they chose not to and the prosecutor's office felt that the reason for not were not legitimate and that the plat had met the township's requirements and allowed it to be recorded. There are several sides to all of these stories and I think they are all understandable.

Phil Laurien stated that they were in the building phase, platted subdivision next to a state national scenic river, very large subdivision. There were very specific erosion control procedures in place because of damage to wild life in this national scenic river. They went out there to do some building inspections and it was just an absolute sea of

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~~Held~~ mud, they had put know of the requirements in place. They did not have the screen filters on the catch basins. There was mud in the road everywhere. He stopped the job site now. He said he would come back tomorrow and sent everyone home until you clean up the damage being done to the state scenic river. Now was that out of his authority, maybe but it was a good bluff. All the contractors went home. The next morning they had sweep all the streets, installed everything, but what they were doing potentially was potentially very significant fines because we had a national scenic river. And that was health and safety and subdivision covers public and general welfare and that was general welfare of the stream. The other issue on planned unit developments that normally they are big enough that there is a phase in them like one through five. If you get out of sink, the big builders want to cherry pick, the want to do a model home down in this corner and sell that phase because they can get in there quick off the main road and there is another main road over here and they want to cherry pick and do a model home, and the public park and the school site that they are supposed to dedicate are in the middle they want to leave all of that until last and they do not want to make the road connection. The fire department and the trustees say they have a real significant issue, you have five hundred house in this subdivision and we want to see the cross connection of streets for cross connection of the streets for snow plowing and maintenance, fire and squads. Not only for the residence but for safety on the job site the fire department does not want to go two miles around. You will say to the developer that we are going to look carefully into your phasing plan. Even if the township says you have to do phase one, two and three this way the developer still may submit the phases out of order. The way that Delaware County will know that is because they go back to the township and the zoning officer has to sign off. The zoning officer's at township's have to be very sophisticated on planned unit developments. It really requires getting smarter and letting you zoning officer have more time to spend with them. They are going to be all kinds of conditions that you attach and the trustees attach to the standards but the other things that are going to be negotiated and attached and the zoning officer has to go back and check everyone of those. The regional planning commission, the county planning commission is not going to be able to do that and that is why that local signature on the plat and each phase of the plat is so important because we rely on that to say you have reviewed it and Mr. VanDyne and Mr. Bravard says, whoever the representative is that signs it is saying it is ready from the zoning standpoint. If we do not have that signature then you are not going to be happy because you are going to say you acted prematurely or you acted without our consent. Mr. VanDyne stated that we have two planned unit developments now that are changing ownership. This guy wants to change everything; he does not like what the other developer did. Phil Laurien said that is too bad, if it is well recorded and it is part of the development plan you can hold him to that. Now he can bring it back for a modification but you may have another problem if he has sold some units in that subdivision the township has to make a decision as to whether that is going to have adverse effect on the homeowner that have already purchased their homes. If you think it does, it is the planning commission's (platting authority) who makes the decision and zoning has the right to way in on it. If they decide there is an adverse effect on those people who are already owners the developer will have to secure signatures of all those new owners on the plat and that can be a hard thing to do. If you have twenty five new owners and one of them says I do not want you removing or reducing that open space by my lot for a new street to a new phase, I do not want a street next to me I did not buy my house to have a street next to me you can not do it. If it amends the plat and you have people already in that section of that plat. That is if they are proposing a change and it has already been plat.

Don Brosius stated that we do not have good language on how to deal with the open space. There are different methods and you need to put all those in there. You can have a conservation group, you can have the homeowner's association, it is more than a homeowner's association, and it is a homeowner's association as far as mandatory membership an obligation to maintain the power of assessment. The other item Mr. Brosius noticed is you do not zone condos. Condos are a form of ownership. If you show him any single family development we have today Mr. Brosius can condo that right now, condominiums form of ownership. There is this perception that we have to zone for condos, condos are just a form of ownership that is all. Phil Laurien stated that condominiums are exempt from platting requirements; condominium statue trumps a platting statue. All you may get for condominium portion pud's you are going to have some attached units that portion may just show you perimeter lot. That is the engineers obligations with all the internal roads are going to be private or if there are just be condominium driveways. They have the same problem with shopping centers as they do multifamily and condominium usage, we have been getting bad paving standards and often times before the last house is even sold the roads are destroyed by construction traffic because they are not built to a township or county road standard. This is one thing that zoning can do is to specify because it is a condominium or a shopping center it is outside the permit of a normal subdivision regulation but zoning can specify because it is a planned unit development it has to have a design life of twenty years so their civil engineer will have to certify that it will have a twenty year design life and or it has to meet county road cross section standards for the anticipated traffic and weight and type of vehicles. Those require design calculations by a civil engineer; he puts his license on the line if his designs under the standard cross section of the road and then it fail. They have found that just adding that only on the clause completely resets the clock and brings the developer to attention. They have just done this in a township and just yesterday in a conversation with a developer that is doing an office complex in a planned unit development it has an inappropriate cross section of standards. Mr. Laurien calls the civil engineer and tells him he does not meet the zoning standards and he said he does not have to meet any zoning standard and I do not have to meet any subdivision standards because this is private. Mr. Laurien asked him if he was aware that they had adopted a new planned commercial planned unit development code and you have to have a twenty year design life. That requires calculations. The analogy that they use is you buy a house the minimum warranty on the shingles is twenty years why shouldn't the warranty on the driveways and the streets be at least the same. You need language in your planned unit development on major and minor modifications, you need a two step process (administrative and legislative), and define which they are. You can adopt planned unit developments four ways in the Ohio Revised Code 519.02.1 AEC and conditional use. You have to say which one your code is so it is clear. The County Prosecutor loves that because even if the language is bad if you refer to the proper statutory section it gets you lined up in court. Jerry Brems asked in the example regarding the certified design life, can the zoning inspector be on site to ensure that it is constructed that way. Phil Laurien stated that he does not have a problem with that, the county engineer does not have jurisdiction on private property or the

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Held: ~~township can simply say we want to see construction inspection report by a licensed civil engineer or the developer is going to pay for the township to hire a licensed civil engineer to watch you. That is the best way to do it if you do not trust the developer.~~ Phil stated that destructive testing is not the appropriate choice because no matter what you do after you take the core cylinder you have a weak spot in the new paving whether it is concrete or asphalt. It is better to inspect at the time of construction and take those inspection reports. Rely on your own inspectors do not rely on developers inspectors. The platting authority is responsible for the health safety and welfare but they do not have any jurisdiction in these areas shopping centers, condominiums it is off limits to them. Inside these areas the zoning inspectors have to pick up the slack, if you do not pick up the slack then the trustees get the complaints. A citizen will come in and say I bought a three hundred thousand dollar condominium and it is not two years old and I am being accessed ten thousand dollars in my unit to rebuild all the roads and it is not even two years old. How could you let that happen? The Trustees say it is really not our problem because it is a condominium as long as they me the density, the perimeter setback, the development plan and so forth it is buyer beware. As an elected official you do not want to do that, you are not going to get re-elected even though you did not cause the problem you did not prevent it either. The elected officials say zoning commission get smarter and write your regulations better to try to reduce the number of loop holes. Mike Kerner asked what his theory was on should versus shall. Don Brosius said if you want it to be required mandatory it would be the word shall. Phil Laurien stated that the standards should be the word shall, you shall have, this shall be the way to calculate this; the design part is a little bit soft tissue. Mike Kerner stated that esthetically it could be should and technically it should be shall.

Chairman Bravard invited Phil Laurien to come back to the Zoning Commission meeting on the last Wednesday of July and make your presentation. This is July 27, 2005.

Phil Laurien asked what do you like about your township and its development patterns and what do you dislike about your township and the development patterns. What do you want you township to look like when it is all built out. They have done fifteen of the comprehensive plans in the last seven years. He left a comprehensive plan for the Zoning Commission to review. They started the comprehensive plan in September 2001 they adopted in February 2004 and it cost twenty-one thousand dollars we would be charged more because we are out of the county. It would still be half the cost of a private consulting firm. They would charge you sixty for this. You are looking at a four year process to do a comp plan and to do a complete zoning overhaul. You have to have grassroots from the ground up.

Chairman Bravard adjourned at 9:20 p.m.

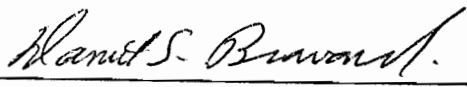
Roll call: Mr. Kerner, yes; Mrs. Taylor, yes; Mr. Colburn, yes; Mr. Van Dyne, yes; and Chairman Bravard, yes. Motion passed 5-0.



 Laura Brown
 Clerk

Approved 08/17/05 _____

Approved as corrected/amended _____



 Dan Bravard, Chairman